

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-146425-13

Date:

March 25, 2014

### Legend

Husband =

Wife =

Trust A =

Trust B =

Family Trust =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Law Firm =

Dear :

This letter responds to your personal representative's letter of November 11, 2013, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to make the election out of the automatic allocation of generation-skipping transfer (GST) tax under § 2632(c)(5).

## FACTS

In Year 1, on a date after December 31, 2000, Husband established and funded an irrevocable grantor retained annuity trust, Trust A (Year 1 Transfer). Husband's retained interest in Trust A terminated at the end of the annuity term on a date in Year 3, and Trust A assets passed to Family Trust for the benefit of Husband's descendants. The estate tax inclusion period (ETIP) with respect to the Year 1 Transfer closed for generation-skipping transfer (GST) tax purposes on the date in Year 3 that Husband's retained interest in Trust A terminated.

In Year 2, on a date after December 31, 2000, Husband established and funded a second irrevocable grantor retained annuity trust, Trust B (Year 2 Transfer). Husband's retained interest in Trust B terminated at the end of the annuity term on a date in Year 4, and Trust B assets passed to Family Trust for the benefit of Husband's descendants. The estate tax inclusion period (ETIP) with respect to the Year 2 Transfer closed for generation-skipping transfer (GST) tax purposes on the date in Year 4 that Husband's retained interest in Trust B terminated.

Husband and Wife retained Law Firm to prepare and file their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Year 1 and Year 2. Husband and Wife each reported one-half of the Year 1 Transfer as a gift in Year 1 on a timely filed Form 709. Husband and Wife each reported one-half of the Year 2 Transfer as a gift in Year 2 on a timely filed Form 709. Husband and Wife did not make the written election out of the automatic allocation of GST exemption under § 2632(c)(5)(A)(i).

Husband and Wife request an extension of time under § 301.9100-3 to make an election out of automatic GST exemption with respect to the Year 1 Transfer and Year 2 Transfer pursuant to § 2632(c)(5)(A)(i).

## LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is the taxable amount multiplied by the "applicable rate." Section 2641(a) defines the term "applicable rate" as the product of the maximum Federal estate tax rate, and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that for purposes of chapter 13, the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess (if any) of 1 over the "applicable fraction." The term "applicable fraction," as defined in

§ 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip).

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that an individual's GST exemption may be allocated at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such return is required to be filed.

Section 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000, and to ETIPs ending after December 31, 2000. See Pub. L. No. 107-16, § 561(a). Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST Trust.

Section 2632(c)(4) provides that, for purposes of § 2632(c), an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

Section 2632(c)(5)(A)(i)(I) provides that an individual may elect to have § 2632(c)(1) not apply to an indirect skip. Such an election shall be deemed to be timely if made on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to § 2632(c)(4) or on such later date or dates as may be prescribed by the Secretary.

Section 26.2632-1(b)(2)(iii)(A) of the Generation-Skipping Transfer Tax Regulations provides, in relevant part, that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to: (1) one or more prior-year transfers subject to § 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current-year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all) future transfers made by the transferor

to a specified trust or trusts; (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or (5) any combination of (1) through (4).

Section 26.2632-1(b)(2)(iii)(B) provides that to elect out, the transferor must attach an election out statement to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C). In general, the election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Prior-year transfers that are subject to § 2642(f), and to which the election out is to apply, must be specifically described or otherwise identified in the election out statement. Under § 26.2632-1(b)(2)(iii)(C), to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing the Form 709 for the calendar year in which: (1) for a transfer subject to § 2642(f), the ETIP closes; or (2) for all other elections out, the first transfer to be covered by the election out was made.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5).

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-2 and § 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(b)(1)(B) and Notice 2001-50, a taxpayer may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the

taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband and Wife are each granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules with respect to the Year 1 Transfer and the Year 2 Transfer.

Husband and Wife's respective elections under § 2632(c)(5) to have the automatic allocation rules contained in § 2632(c)(1) not apply to the Year 1 Transfer and the Year 2 Transfer should be made on supplemental Forms 709 for Year 1 and Year 2, respectively. The supplemental Forms 709 should be filed with the Internal Revenue Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the Supplemental Forms 709. A copy is enclosed for this purpose.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representative.

Sincerely,

Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy for § 6110 purposes  
Copy of this letter

cc: